

## **PART 18**

### **Nonconforming Properties, Uses, and Structures**

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#### **SECTION 1801. PURPOSE AND SCOPE**

##### **A. Intent**

The zoning districts established by this Chapter are designed to guide future use of land in the Township by encouraging the development of desirable residential, commercial and industrial areas, with appropriate groupings of compatible and related uses, and to the end of promoting and protecting the public health, safety, comfort, prosperity, and other aspects of the general welfare. It is, also, fundamental to the purpose of this Chapter to recognize that many existing lots throughout the Township may be less adequate than others because of their location, size, odd shape, difficult topography, or any combination of these limitations. Alleviation of proven hardships on these lots is made available through variance application to the Zoning Hearing Board, created herein.

##### **B. Approach**

To achieve the stated intent, lawful existing uses which would be prohibited or restricted under the terms of this Chapter, or future amendments, and which do not conform to the character and regulations of the zoning district in which they are located shall be subject to certain limitations. The regulations set forth below are intended to provide a gradual remedy for the undesirable conditions resulting from indiscriminate mixing of uses, and to afford a means whereby nonconforming uses can be gradually eliminated and re-established in more suitable locations within the Township. Similarly, buildings or other structures, which do not comply with one or more of the applicable developmental standards in which they are located are, deemed to be nonconforming. The Township Zoning Office will respond in writing, at the request of a non-conforming property owner, to any lending institution, title company, or real estate company, to verify or confirm the legal non-conforming status of a property up for sale or re-financing.

##### **C. Avoidance of Undue Hardship**

To avoid undue hardship, nothing in this Chapter shall be deemed to require a change in plans, construction, or intended use of any structure on which actual construction was lawfully begun prior to the effective date, or amendment, of this Chapter, and on which actual construction has been carried on diligently. Where demolition or removal of an existing structure has been substantially begun prior to rebuilding, such demolition or removal shall be deemed to be construction, provided that the work shall have been carried on diligently. All permits for structures or uses issued prior to the adoption of this Chapter are declared void ninety (90) days from the effective date of this Chapter unless:

1. Substantial construction shall have been commenced or use implemented; or

2. Written contracts have been entered into pursuant to said permit by which substantial legal rights have accrued. This subsection is applicable only if such construction or use does not conform to the provisions of this Chapter.

#### D. Illegal Uses

Illegal uses existing at the time this Chapter is enacted shall not be validated by virtue of its enactment. The benefit of legal nonconforming use status is available only for a lawful use which existed on the land when this Chapter took effect and it is the burden of the party alleging the existence of a nonconforming use to establish both its existence and **legality** at the time before enactment of this Chapter.

### **SECTION 1802. CONTINUANCE AND ALTERATION OF NONCONFORMING USES**

Lawful structures, uses of land, or structures and use of land in combination, which at the effective date of this Chapter or subsequent amendment thereto were rendered nonconforming, may be continued so long as they remain otherwise lawful, including in the case of subsequent sale of the property, subject to the following regulations:

#### A. Expansion

A nonconforming building or use may be expanded by 15% of the space occupied at the effective date of adoption of this Chapter, following a public hearing and review by the Zoning Hearing Board as a Special Exception, provided that:

1. The building or use has not previously been expanded by as much as 15% within 10 years prior to the effective date of adoption of this Chapter.
2. In the case of commercial or industrial use, the expansion of the nonconforming building or use is necessitated by the natural growth of trade.
3. The expansion does not involve any property not owned at the time the use became nonconforming.
4. No new or increased nonconformities are created related to structures or site requirements.
5. Additional parking is provided for the expanded building or use in accordance with the requirements of this Chapter.
6. No new nonconforming use is added to the premises. Only the specific principal use in existence at the effective date of adoption of this Chapter has protected status.

#### B. Extension

A nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Chapter, but no such use shall be extended to occupy any land outside such building, unless approved by the Zoning Hearing Board. No additional or accessory structure not conforming to the requirements of this Chapter shall be erected or enlarged in connection with a nonconforming use of land.

#### C. Repair and Alteration

A nonconforming structure may be repaired or maintained, provided, however, that no nonconforming structure may be altered in a way that increases its nonconformity without

approval from the Zoning Hearing Board, but any structure or portion thereof may be altered to decrease its nonconformity without such approval.

**D. Change in Use or Ownership – Change in use shall be addressed under two (2) categories:**

1.) Current Owner and 2.) Subsequent Owner. (A seller of a nonconforming property must disclose to a subsequent buyer, in writing, the status of the nonconforming property, including any restrictions on change of use as described below).

1. Current Owner (Owner of record on May 17, 2000) – The owner of a nonconforming use of a lot or structure may change the use to another nonconforming use of equal or less severity, based on the determination of the Zoning Hearing Board after a public hearing. Change of use for nonconforming uses and structures shall be limited to those uses permitted by right in the type of district in which the nonconforming lot or structure was originally classified, or to those uses allowed by Conditional Use or Special Exception. After a nonconforming use is changed to a more restrictive (less severe) nonconforming use, it may in the future be returned to the original nonconforming use, or to an equal or less severe use, provided that the property remains under the ownership of the original owner as aforementioned and be based on the determination of the Zoning Hearing Board after a public hearing. Once a nonconforming use is changed to a conforming use, it shall not thereafter be changed to a nonconforming use.
2. Subsequent Owner (Owner of record who closed on or otherwise acquired property by deed after May 17, 2000) – Once a nonconforming lot or structure is sold or transferred through deed, the nonconforming use at the time of transfer shall be permitted to continue. In addition, the use may change to another nonconforming use of equal or less severity, based on the determination of the Zoning Hearing Board after a public hearing. Change of use for nonconforming uses and structures shall be limited to those uses permitted by right in the type of district in which the nonconforming lot or structure was originally classified, or to those uses allowed by Conditional Use or Special Exception. Once any subsequent owner changes a nonconforming use to a more restrictive (less severe) nonconforming use, it shall not thereafter be changed back to a less restrictive (more severe) nonconforming use. Changing a nonconforming use to the same or more restrictive (less severe) cases will be determined by the Zoning Hearing Board after a public hearing. Once a nonconforming use is changed to a conforming use, it shall not thereafter be changed to a nonconforming use.

3. Special Provisions for Lots with Nonconforming Size

Whenever there exists a lot that is nonconforming with respect to size, and that lot contains one or more structures, and parking for the existing use does not meet ordinance requirements, a change in use to a more restrictive (milder) permitted use that does not involve any addition or enlargement of a structure shall be permitted, even though parking would still not meet ordinance requirements, as long as the new use requires an equal or less number of parking spaces by current ordinance than the existing use.

4. Damage, Destruction or Razing

Should a nonconforming structure or nonconforming portion of a structure be damaged or destroyed by fire, flood, explosion, or other casualty, it may be reconstructed or re-established to its' original non-conformity. Should a nonconforming structure be voluntarily razed by the property owner, or should a nonconforming structure or portion of a structure containing a nonconforming use become physically unsafe or unlawful by reason of physical condition, that structure shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations for the district in which it is located.

### **SECTION 1803. MOVING A NONCONFORMING STRUCTURE**

A nonconforming structure shall not be moved, in whole or in part, to any portion of the lot or parcel other than that occupied by such structure at the effective date of adoption or amendment of this Chapter. Should a nonconforming structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

### **SECTION 1804. DISCONTINUANCE OR ABANDONMENT**

If any nonconforming use of land, structure, or portion of a structure ceases use or operation for a period of six (6) months or more, and the owner within a total period of twelve (12) months from cessation fails or refuses to apply to the Zoning Officer for a permit to reinstitute or continue the original use, or fails to immediately, actively, and consistently market the availability for reuse (such as newspaper ads, premises signs with corresponding newspaper advertisements, and listing or marketing agreements), then the failure or refusal shall be conclusively deemed to be an abandonment of the original use. Any subsequent use of the land, structure, or portion of structure shall conform to the requirements of this Chapter in the district in which it is located. From the time of such application to reinstitute or continue the use, the owner shall have not more than one (1) year to re-establish the use. In the case of an owner diligently attempting to secure a viable new tenant or buyer, the period shall be extended to two (2) years whereby the owner must re-establish a nonconforming use of an equal or more restrictive (milder) classification. Simply placing a sign or signs on the premises shall not be considered as due diligence in maintaining or re-establishing nonconforming status.

### **SECTION 1805. OCCUPANCY PERMITS**

An Occupancy Permit shall be issued for any legal nonconforming use, building, or sign, to be continued after the effective date of this Chapter, subject to the following regulations:

- A.** Occupancy Permits for nonconforming uses, buildings, or signs shall be valid for so long as the nonconforming use remains legal.
- B.** Application for an initial occupancy of a nonconforming use must include a site plan of the entire property showing the locations and dimensions of structures, storage areas, and parking areas; a narrative statement detailing, where applicable, hours of operation, number of employees, number and type of business vehicles utilized, services performed, etc.; and a floor plan for each principal structure indicating intended uses of individual rooms.
- C.** Such certificates shall be issued only after the Zoning Officer has inspected the premises and determined that the use, building, or sign is lawful and conforming to this Chapter, but in no case more than fifteen (15) days after the date of application.
- D.** Full particulars of the nature and extent of the nonconformity shall be included in the Occupancy Permit.

### **SECTION 1806. CONTIGUOUS NONCONFORMING LOTS**

#### **A. Contiguous Nonconforming Lots Under Separate Ownership**

Nonconforming lots of record existing in the R-3 district on the effective date of adoption of this Chapter which are vacant may be developed for single-family dwellings without a variance only where such lot is in separate ownership from all contiguous lots, subject to the following requirements:

1. The lot area is at least eighty percent (80%) of the minimum lot area required in the district.
2. Any side yard abutting a street shall be a minimum of fifteen (15) feet and all other side yards shall be a minimum of five (5) feet.
3. A rear yard abutting a street shall be a minimum of twenty-five (25) feet and all other rear yards shall be a minimum of ten (10) feet.
4. The minimum front yard shall be the recorded building line or, where there is no recorded building line, the average of the existing building setbacks on adjacent lots on the same side of the street and in the same block and same recorded plan.

**B. Contiguous Nonconforming Lots Under Same Ownership**

Nonconforming lots of record existing on the effective date of adoption of this Chapter which are vacant but under the same ownership as a contiguous lot(s) shall be combined with such contiguous lot(s) in order that the nonconforming lot will conform to this Chapter.